

Mar 28, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHARLES WALTER LARKIN III,
Personal Representative of the
ESTATE OF STEPHANIE NICOLE
LARKIN; and SIDNEY P. OTTEM,
as Guardian ad Litem for Z.G., minor
child of Stephanie Nicole Larkin; and
EVA LARKIN,

Plaintiffs,

v.

COMMUNITY HEALTH SYSTEMS,
INC., a Delaware corporation, d/b/a
Yakima HMA, LLC, d/b/a Yakima
Regional Medical and Cardiac Center,

Defendant.

No. 1:19-cv-03005-SMJ

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS**

Before the Court is Defendant Community Health Systems, Inc.'s ("CHSI") Motion to Dismiss for Lack of Jurisdiction, ECF No. 6. Plaintiffs oppose the motion. ECF No. 10. Having reviewed the pleadings and the file in this matter, the Court is fully informed and grants the motion.

BACKGROUND

On January 1, 2017, 29-year-old Stephanie Nicole Larkin, a single mother, was hospitalized at Yakima Regional Medical and Cardiac Center ("the hospital")

1 for a tailbone cyst abscess and general weakness. ECF No. 1 at 4. She had a history
2 of lupus erythematosus, an autoimmune disease that can be effectively treated. *Id.* It
3 is typically treated by rheumatologist physicians. *Id.* During the 19-day
4 hospitalization period, the abscess essentially healed, but Larkin's condition steadily
5 deteriorated. *Id.*

6 Some physicians and nurses made recommendations to transfer Larkin to a
7 different facility with a higher level of care, including inpatient rheumatology
8 services. *Id.* at 5. The family repeatedly requested such transfers. *Id.* However, the
9 hospital wrongfully kept Larkin at its facility. *Id.* On January 19, 2017, the hospital
10 finally approved Larkin's transfer to Deaconess Medical Center in Spokane,
11 Washington. *Id.* Despite efforts by Deaconess staff and physicians, Larkin's
12 condition was such that she did not recover. *Id.* She passed away at the Deaconess
13 Medical Center on January 20, 2017. *Id.*

14 On January 11, 2019, Plaintiffs filed a complaint against CHSI in this Court,
15 alleging failure to obtain informed consent, negligence, and outrage. ECF No. 1.
16 They claim that CHSI was doing business as Yakima HMA, LCC, which was doing
17 business as the hospital. *Id.* Plaintiffs further allege that the "physicians, resident
18 physicians, physicians with fellowships, hospitalists, nurses and other medical staff
19 who treated or otherwise provide medical services to . . . Larkin . . . were employees
20 and/or agents of defendant CHSI/Yakima Regional." *Id.* at 3.

1 CHSI is a Delaware corporation with its principal place of business in
2 Tennessee. *Id.* CHSI owns the stock of CHS/Community Health Systems, Inc.;
3 which is the sole member of Health Management Associates, LLC; which is the sole
4 member of Hospital Management Associates, LLC; which is the sole member of
5 Yakima HMA, LLC. ECF No. 14 at 5.

6 **LEGAL STANDARD**

7 In resolving a motion to dismiss for lack of personal jurisdiction under
8 Federal Rule of Civil Procedure 12(b)(2) on written materials, a court accepts
9 uncontroverted facts in the complaint as true and resolves conflicts presented in
10 affidavits in the plaintiff's favor. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d
11 1218, 1223 (9th Cir. 2011). Courts may consider evidence presented in affidavits
12 and declarations to determine whether personal jurisdiction exists over a defendant.
13 *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Where a defendant's
14 motion is based on a written record of affidavits and discovery materials and no
15 evidentiary hearing is held, the plaintiff need only make a prima facie showing of
16 jurisdictional facts. *Picot v. Weston*, 780 F.3d 1206, 1210 (9th Cir. 2015); *Fields v.*
17 *Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 301 (9th Cir. 1986). To make a
18 prima facie showing, "the plaintiff need only demonstrate facts that if true would
19 support jurisdiction over the defendant." *Unocal Corp.*, 248 F.3d at 922.

20 A court exercises personal jurisdiction over a defendant if (1) it is permitted

1 by the state’s long-arm statute and (2) the exercise of jurisdiction does not violate
2 federal due process. *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir.
3 2006).

4 The Court first “begins its personal jurisdiction analysis with the long-arm
5 statute of the state in which the court sits.” *Glencore Grain Rotterdam B.V. v.*
6 *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002). Washington’s
7 long-arm statute extends the Court’s personal jurisdiction to the broadest reach
8 permitted by the United States Constitution. *See* Wash. Rev. Code (“RCW”)
9 § 4.28.185. Because Washington’s long-arm statute is coextensive with federal due
10 process requirements, the jurisdictional analysis is the same. *See Schwarzenegger*
11 *v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01 (9th Cir. 2004).

12 Due process requires that a defendant “have certain minimum contacts with
13 [the forum state] such that the maintenance of the suit does not offend traditional
14 notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S.
15 310, 315 (1945); *see Walden v. Fiore*, 571 U.S. 277, 283 (2014). The strength of
16 “minimum contacts” required depends on the type of jurisdiction invoked: general,
17 “all-purpose,” or specific, “conduct-linked.” *Daimler AG v. Bauman*, 571 U.S. 117,
18 121 (2014).

19 **A. General Jurisdiction**

20 To establish general jurisdiction, a plaintiff must demonstrate that the

1 defendant has continuous and systematic contacts sufficient to approximate
2 physical presence in the state. *In re W. States Wholesale Nat. Gas Antitrust Litig.*,
3 715 F.3d 716, 741 (9th Cir. 2013). The standard is “exacting” because it would
4 allow a defendant to be haled into court in the forum state to answer for any of its
5 activities anywhere in the world. *Schwarzenegger*, 374 F.3d at 801.

6 A foreign entity must have affiliations so continuous and systematic as to
7 render it “essentially at home” in the forum state. *Goodyear Dunlop Tires*
8 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (corporations); *Ranza v. Nike,*
9 *Inc.*, 793 F.3d 1059, 1069 (9th Cir. 2015) (limited liability companies).

10 **B. Specific Jurisdiction**

11 To establish specific jurisdiction, a plaintiff must show that the defendant’s
12 suit-related conduct “creates a substantial connection with the forum State.”
13 *Walden*, 571 U.S. at 284. Three requirements must be satisfied: (1) the defendant
14 either “purposefully direct[s]”¹ its activities or “purposefully avails”² itself of the
15 benefits afforded by the forum’s laws; (2) the claim arises out of or relates to the
16 defendant’s forum-related activities; and (3) the exercise of jurisdiction comports
17 with fair play and substantial justice, i.e., it is reasonable. *Dole Food Co. v. Watts*,
18 303 F.3d 1104, 1111 (9th Cir. 2002). The requisite minimum contacts must arise

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20 ¹ A purposeful direction analysis is generally used in suits sounding in tort. *Schwarzenegger*, 374 F.3d at 802.

² A purposeful availment analysis is generally used in suits sounding in contract. *Id.*

1 out of contacts that the defendant itself creates with the forum state, and not the
2 defendant's contacts with persons who reside there. *Walden*, 571 U.S. at 284.

3 **DISCUSSION**

4 CHSI argues that Plaintiffs fail to establish both general and specific
5 jurisdiction. ECF No. 6 at 5. It posits that it is not doing business as Yakima HMA
6 or Yakima Regional Medical and Cardiac Center ("the hospital") and that it has no
7 offices, agents, or employees in the state of Washington. *Id.* at 2. It contends that the
8 only relationship with the hospital where Larkin was admitted is as a remote parent
9 company. *Id.* And because merely having an "indirect ownership interest in a
10 Washington company," it argues, does not subject it to the Court's personal
11 jurisdiction, it notes that dismissal is appropriate. *Id.* at 6. In support, it submits the
12 declaration of Justin D. Pitt, the Chief Litigation Counsel for a company that
13 provides consulting services to CHSI in its role as a publicly-traded company. ECF
14 No. 7.

15 Plaintiffs oppose the motion and request oral argument.³ ECF No. 10. They
16 argue that through CHSI's own public filings, press releases, interactive website,
17 and lobbying activities, it has established that it is not merely a remote parent
18 company and that it does transact business in Washington. *Id.* In support, they submit

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20 ³ As the Court finds that oral argument is not warranted under Local Civil Rule
7(i)(3)(B)(iii), the Court considered the motion without oral argument on the date
signed below.

1 the declaration of Richard C. Eymann, counsel of record, who appends various
2 materials including CHSI's website, annual report, and registration information. *See*
3 *generally* ECF No. 11.

4 Importantly, the affidavits and documentary evidence presently before the
5 Court create one coherent picture, so the Court need not resolve any conflicts in
6 Plaintiffs' favor. Consistent with Pitt's declaration, Plaintiffs' own documentary
7 evidence shows that CHSI is a holding company with no employees. *See, e.g.*, ECF
8 No. 11-13 at 4 n.1. Its *subsidiary* companies and partnerships, not CHSI itself, "own
9 or lease and operate their respective hospitals and other assets and businesses." *Id.*

10 Moreover, Plaintiffs append the homepage of CHSI's website in support of
11 the contention that it operates hospitals, including the Washington hospital in
12 question. ECF No. 11-1. But also listed on the same page is information that its
13 "*affiliates* own, operate or lease" hospitals. *Id.* (emphasis added). Elsewhere on the
14 website, the legal information states:

15 Community Health Systems, Inc. is a holding company and does not
16 engage in any business other than those activities associated with being
17 a publicly traded (NYSE: CYH) stock company, such as, listing
18 agreements with the New York Stock Exchange ('NYSE') and
19 registration and compliance with the U.S. Securities and Exchange
20 Commission ('SEC'). CHSPSC, LLC provides management services to
Community Health Systems, Inc., including assisting it with its
compliance obligations with both the NYSE and the SEC. Both of these
institutions require that public companies maintain information on an
internet website that is accessible to shareholders; this website fulfills
those obligations. . . .Statements that include the words 'we,' 'us,' 'our,'
'the Company,' and similar inclusive words are intended to be summary

1 information about the consolidation of Community Health Systems,
2 Inc., and its subsidiaries taken as a whole, and are not intended to bind
3 or imply that the actions of one legal entity should be attributed to the
4 actions of another legal entity (such as Community Health Systems,
5 Inc.). In its registered filings with the SEC, Community Health
6 Systems, Inc., is required to adhere to the SEC's principles of 'plain
7 English' and avoid the use of defined terms, jargon, and parenthetical
8 exculpatory statements; for ease of reading, Community Health
9 Systems, Inc. and CHSPSC, LLC adhere to those principles throughout
10 this website.

11 Each hospital affiliated with Community Health Systems, Inc.
12 and CHSPSC, LLC is owned (or leased) and operated by a separate and
13 distinct legal entity. Each such legal entity is responsible for the
14 healthcare services delivered at its respective facility, employs its own
15 management and other personnel, and grants medical staff privileges
16 and credentials to its own, separate medical staff.

17 ECF No. 14-1 at 2.

18 Viewed in context, it is evident that CHSI had no employees, did not own or
19 operate any hospitals, and referred to it and its subsidiaries through words like "we"
20 and "our"—such that it understandably gave Plaintiffs reason to believe CHSI
directly owned or operated the hospitals and employed its staff and physicians.
Consequently, Plaintiffs' documentary evidence indicating that CHSI was involved
in recruitment, patient care, and other aspects of hospital management does not
support its prima facie showing because CHSI was broadly referring to it and its
affiliates. *See, e.g.*, ECF No. 11-2 at 5, 16–17, 20; ECF No. 11-13.

Plaintiffs do not allege or provide documentation of any other forum-related
activities that CHSI engaged in other than that it owned and operated a Washington

1 hospital. Thus, the Court cannot undertake a personal jurisdiction analysis. As it
2 appears that Plaintiffs merely sued the wrong defendant, this motion is more
3 appropriately viewed as a motion to dismiss for failure to state a claim. In any case,
4 the Court concludes that Plaintiffs have not met their prima facie showing of
5 jurisdiction. Accordingly, the Court does not exercise personal jurisdiction over
6 CHSI.

7 Plaintiffs alternatively request the opportunity to conduct targeted
8 jurisdictional discovery of CHSI's relevant forum-specific subsidiaries. ECF No.
9 10. The Court declines to do so given that CHSI's motion to dismiss and reply brief
10 contain sufficient information to guide Plaintiffs in their search of a proper
11 defendant.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 **1. Defendant's Motion to Dismiss for Lack of Jurisdiction, ECF No. 6,**
14 **is GRANTED.**

15 **2. Plaintiffs' claims against Defendant are DISMISSED WITHOUT**
16 **PREJUDICE.**

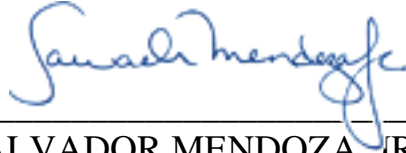
17 **3. The Clerk's Office is DIRECTED to ENTER JUDGMENT and**
18 **CLOSE the file.**

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1 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
2 provide copies to all counsel.

3 **DATED** this 28th day of March 2019.

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6 SALVADOR MENDOZA, JR.
7 United States District Judge
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